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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 17, 1998

Debra Kriete, Esq.  
General Counsel  
Schools & Libraries Corp.  
1023 15th Street, NW, #200  
Washington, D.C. 20005

Reference: Application Form 471; State of Tennessee

Dear Ms. Kriete:

We have received a copy of a letter to you dated June 3, 1998 from Integrated Systems and Solutions, Inc. ("ISIS 2000"), an unsuccessful bidder to provide Internet Access Services to the State's K-12 schools. In this letter, ISIS 2000 asks the Schools and Libraries Corporation ("SLC") to deny the State's K-12 schools a "funding commitment" with all other similar situated schools, solely on the basis that ISIS 2000 has filed an informal Objection (which is now pending) with the Federal Communications Commission ("Commission") to the State's Application. Any denial by the SLC of a funding commitment to the State's schools, solely on the basis of an unresolved Objection by a disgruntled bidder in a State contract proceeding, would be contrary to law and policy, as well as a denial of Due Process for the State's schools.

As ISIS 2000 is abundantly aware, the inability to receive an initial funding commitment by the SLC at this time is tantamount to a grant of the ISIS 2000 Objection since it would deny the State's schools access to the pool of available funds during the initial "75-day window". See, FCC Public Notice, CC Docket No. 96-45, DA97-2349 (rel. Nov. 6, 1997). Further, since the funding pool may not be sufficient to accommodate the needs of all eligible schools, practically a denial would be a rejection of the State's Application. See, FCC News Release, CC Docket No. 96-45, Report No. CC98-17 (rel. June 12, 1998). And, since the State's schools have certified that they are eligible for funding, and have asked the Commission for such a confirming ruling, a denial also would deny the State's schools a fair and open consideration of their request under Part 1 of the Commission's Rules. The net result of the ISIS letter, therefore, is to effectively prejudge in its favor issues now before the Commission, which would irreparably harm Tennessee schools and K-12 school children.

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The SLC should find a funding commitment is warranted. This is the minimum required by the Rules. In determining whether to grant extraordinary injunctive relief of the type ISIS 2000 is requesting, the Commission uses the four-factor test established in *Virginia Petroleum Jobbers Ass'n v. F.P.C.*, 259 F2d 921, 925 (DC Cir 1958), as modified by *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.* 559 F 2d 841, 843 (DC Cir 1977). Under that test, petitioners must demonstrate that: (1) they are likely to succeed on the merits; (2) they would suffer irreparable injury absent relief; (3) relief would not substantially harm other interested parties; and (4) relief would serve the public interest. ISIS 2000 has not satisfied any of the four factors. ISIS 2000 will not suffer harm since the State contract has been awarded to ENA, regardless of funding levels. On the other hand, the State's schools will be irrevocably harmed if they are denied access to funding because it will disappear without recourse. Further, bare allegations about the State's improper "motives" and about the "overlooked" benefits of ISIS 2000's losing proposal, do not approach the minimum showing required to demonstrate that ISIS 2000 will in fact succeed on the merits of its Objection. Finally, the clear public interest in insuring that Tennessee students have access to the Universal Service fund, as intended by Congress, favors a commitment at this stage.

Finally, the Commission's Rules fully recognize the Commission's, and the SLC's, ongoing audit authority and procedures with respect to the Schools and Library's Program (47 CFR§54.516)(see also Universal Service Order at paragraph 581). Thus, any positive funding commitment made by the SLC at this time would not, contrary to the ISIS 2000 assertions, be irreversible or made independent of the Commission's review process.

Accordingly, the State respectfully requests that this ISIS 2000 attempt to prejudge the outcome of this matter in its favor be rejected as contrary to law and policy, and to the best interests of the school children who the Universal Service Fund is designed to benefit and serve.

Sincerely,

*William K. Coulter*

William K. Coulter

WKC:clz

cc: Jeffrey Linder, ENA  
Ramsey Woodworth, ISIS 2000  
Irene Flannery, FCC  
Magalie Roman Salas, FCC Docket 96-45